Public Prosecutor v Md Alim bin Samad

HIGH COURT (JOHOR BAHRU) — CRIMINAL TRIAL NOS 45-5 AND 45-6 OF 1997
ABDUL MALIK ISHAK J
11 AUGUST 1997

Criminal Procedure *— Charge — Joinder of — Whether two separate offences can be tried together — Whether the acts are so connected together to form the same transaction — Proximity of time, unity or place and continuity of action or design — Criminal Procedure Code (FMS Cap 6) ss 163 & 165(1)*

Criminal Procedure *— Trial — Close of prosecution's case — Evidence adduced by police uncorroborated — Whether prosecution has proved case beyond reasonable doubt*

Evidence *— Presumption — Drug trafficking — Presumption of knowledge and trafficking of drugs — Others had access to places where drugs were concealed — Knowledge of presence of drugs insufficient to establish possession or control — Dangerous Drugs Act 1952 ss 37(d), (da)(vi) & (g)*

Evidence *— Similar facts — Reference to other criminal acts — Whether similar fact evidence admissible*

On 12 June 1996, three police officers proceeded to the accused's house in Johor Bahru ('the house'). The accused was detained and a bodily search subsequently revealed a waist pouch tucked at his waist which contained 2.79gm of cannabis, which did not form part of the charges brought against the accused in this trial. The accused was handcuffed and led into the house. After entering the house, the police then arrested four other persons in the house. The police found 14.2gm of cannabis in the room occupied by one of them, Razali bin Rejab '(Razali'), to which he had pleaded guilty to a charge of possession in another trial. The police went on to find 997.79gm cannabis in the accused's room. The police also found 480.9gm of cannabis in a tool box located in the kitchen. One of the police officers, ASP Imran bin Abdul Rahman ('ASP Imran'), testified that the key to the tool box was seized from the accused who held it in his clenched fist. The accused was charged with two offences of drug trafficking under s 39B(1)(a) and punishable under s 39B(2) of the Dangerous Drugs Act 1952 ('the Act'). At the commencement of the trial, the deputy public prosecutor applied for these two offences to be tried together. The court also had to decide on whether the drugs seized was a dangerous drug within s 2 of the Act. Although the government chemist had testified that the drugs were cannabis as defined under s 2 of the Act, under cross-examination, he asserted that he could not deny that the drugs seized were Indian Hemp.

Held, acquitting and discharging the accused without calling his defence:

(1) The Criminal Procedure Code (FMS Cap 6) provides that every offence must be set out in separate charges and must be tried separately. In this case, although there was only one accused

person, the offences were committed in a series of acts, the acts were so connected together as to form the same transaction and there is more than one offence. There is no definite formula to determine whether two or more acts form the same transaction. The courts must take into account proximity of time, unity or proximity of place, continuity of action and continuity of purpose or design. For these reasons, both the offences were tried together (see p 265D–H).

(2) The recovery of the 2.79gm of cannabis from the waist pouch was the subject matter of a different police report from that of the two charges which the accused was facing. They were not related to the two charges tried before this court. However, the recovery of the cannabis in the waist pouch was admissible as similar fact evidence. Whilst the prosecution may not adduce evidence to show that the accused has been guilty of any criminal act other than that covered by the charge, the mere fact that the evidence adduced tends to show the commission of another offence does not render it inadmissible. It is admissible if it is relevant to an issue before the court or if it is an indication of a state of mind such as intention (see p 271A–F); *X v PP* [1951] MLJ 10 and *Abubakar bin Ismail v R* [1954] MLJ 67 followed.

(3) There was no evidence that Razali obtained the drugs, for which he pleaded guilty to, from the accused. Although another occupant of the house testified that he knew Razali smoked ganja, he did not know where Razali got his stock from. Thus, the drugs found in the room occupied by Razali could not be connected to the accused (see p 272E).

(4) The prosecution sought to connect the drugs found in the waist pouch to the drugs found in the accused's room to show that the accused had knowledge of the drugs inside his room. There was ample evidence to show that all the rooms and the kitchen in the house were accessible to different persons that used to frequent the house. Therefore, even if the accused had knowledge of the presence of the purported cannabis in these places, that by itself would be insufficient to establish possession or control of the cannabis given that others had access to the accused's room (see pp 272F–I and 273A–C); *Gooi Loo Seng v PP* [1993] 2 MLJ 137 followed.

(5) The evidence of the police officer with regard to the seizure of the bunch of keys from the clenched fist of the accused was far-fetched and could not be believed. Further, the evidence that ASP Imran got the keys from the clenched fist of the accused was not corroborated by the police officer who handcuffed the accused. A maximum evaluation of the prosecution's evidence must be undertaken and it followed that the prosecution had failed to prove the charge of trafficking beyond reasonable doubt (see pp 273G–I and 274A–I).

(6) There is no ambiguity as to the construction of the Dangerous Drugs (Amendment of First Schedule) Order 1996. The effect

of 'cannabis (Indian Hemp) and cannabis resin (resin of Indian hemp)' as a dangerous drug has been deleted by the amendment. Since the purported cannabis which the accused was said to be trafficking in was not purely cannabis but also Indian Hemp, then the accused had not committed any offence in law (see p 278E–F); *PP v Amir bin Mahmood & Ors* [1996] 5 MLJ 159 followed and *Mohd Yusof bin Said v PP* [1996] 1 MLJ 640 distinguished.

[Bahasa Malaysia summary

Pada 12 Jun 1996, tiga orang pegawai polis telah menuju ke rumah tertuduh di Johor Bahru ('rumah tersebut'). Tertuduh ditahan dan pemeriksaan badan kemudiannya menunjukkan suatu dompet pinggang di pinggangnya yang mengandungi 2.79gm ganja, yang tidak membentuk sebahagian daripada pertuduhan yang dibawa terhadap tertuduh dalam perbicaraan ini. Tertuduh digari dan dibawa ke dalam rumah tersebut. Selepas memasuki rumah tersebut, polis kemudiannya menangkap empat orang lain dalam rumah tersebut. Polis menjumpai 14.2gm ganja dalam bilik yang diduduki oleh salah seorang daripada mereka, Razali bin Rejab '(Razali'), yang mana dia telah mengaku bersalah atas pertuduhan milikan dalam perbicaraan lain. Polis kemudiannya menjumpai 997.79gm ganja dalam bilik tertuduh. Polis juga menjumpai 480.9gm ganja dalam kotak peralatan yang dijumpai di dapur. Salah seorang daripada pegawai polis, iaitu ASP Imran bin Abdul Rahman ('ASP Imran'), memberi keterangan bahawa kunci kotak peralatan dirampas daripada tertuduh yang memegangnya dalam buku limanya. Tertuduh dipertuduhkan dengan dua kesalahan pengedaran dadah di bawah s 39B(1)(a) dan boleh dihukum di bawah s 39B(2) Akta Dadah Berbahaya 1952 ('Akta tersebut'). Di permulaan perbicaraan, timbalan pendakwa raya memohon supaya kedua-dua kesalahan dibicarakan bersama. Mahkamah juga harus memutuskan sama ada dadah yang dirampas adalah dadah berbahaya dalam rangkuman maksud s 2 Akta tersebut. Walaupun ahli kimia kerajaan telah memberi keterangan bahawa dadah itu adalah ganja seperti yang ditafsirkan oleh s 2 Akta tersebut, di bawah pemeriksaan balas, dia menegaskan bahawa dia tidak boleh menafikan bahawa dadah adalah Hemp dari India.

Diputuskan, membebaskan dan melepaskan tertuduh tanpa memanggil pembelaannya:

(1) Kanun Acara Jenayah (NMB Bab 6) memperuntukkan bahawa setiap kesalahan mestilah dinyatakan dalam pertuduhan berasingan dan mestilah dibicarakan secara berasingan. Dalam kes ini, walaupun cuma terdapat seorang tertuduh, kesalahan-kesalahan dilakukan dalam satu siri tindakan, perbuatan begitu berkaitan hinggakan membentuk transaksi yang sama dan terdapat lebih daripada satu kesalahan. Tiada rumusan yang pasti untuk menentukan sama ada dua perbuatan atau lebih membentuk transaksi yang sama. Mahkamah mesti mengambil kira kedekatan

masa, perpaduan atau kedekatan tempat, kesinambungan perbuatan dan kesinambungan tujuan atau niat. Untuk sebab-sebab ini, kedua-dua pertuduhan dibicarakan bersama (lihat ms 265D–H).

(2) Ganja sebanyak 2.79gm yang didapati daripada dompet pinggang merupakan isi perkara laporan polis yang berlainan daripada laporan tentang dua pertuduhan yang dihadapi oleh tertuduh. Mereka tiada kena-mengena dengan dua pertuduhan yang dibicarakan di hadapan mahkamah ini. Namun demikian, ganja yang didapati dalam dompet pinggang boleh diterima sebagai keterangan fakta serupa. Manakala pihak pendakwa tidak boleh mengemukakan keterangan bagi menunjukkan bahawa tertuduh bersalah atas mana-mana perbuatan jenayah lain daripada yang diliputi oleh pertuduhan, fakta semata-mata bahawa keterangan yang dikemukakan seolah menunjukkan perbuatan kesalahan lain tidak menjadikannya tidak boleh diterima. Ia boleh diterima sekiranya ia adalah relevan kepada suatu isu di hadapan mahkamah atau ia menunjukkan keadaan minda seperti hasrat (lihat ms 271A–F); *X v PP* [1951] MLJ 10 dan *Abubakar bin Ismail v R* [1954] MLJ 67 diikut.

(3) Tiada keterangan bahawa Razali memperolehi dadah itu, yang mana dia mengaku salah, daripada tertuduh. Walaupun seorang penghuni lain rumah tersebut memberi keterangan bahawa dia tahu Razali menghisap ganja, dia tidak tahu dari manakah Razali mendapat bekalannya. Justeru itu, dadah yang dijumpai dalam bilik yang diduduki oleh Razali tidak boleh dikaitkan dengan tertuduh (lihat ms 272E).

(4) Pihak pendakwa hendak mengaitkan dadah yang dijumpai dalam dompet pinggang kepada dadah yang dijumpai dalam bilik tertuduh bagi menunjukkan bahawa tertuduh tahu tentang dadah dalam biliknya. Terdapat keterangan yang lebih daripada mencukupi bagi menunjukkan bahawa semua bilik dan dapur di rumah tersebut boleh dimasuki oleh orang berlainan yang melawat. Maka, sekalipun tertuduh tahu tentang kehadiran ganja yang dikatakan di tempat-tempat ini, itu dengan sendirinya tidak mencukupi untuk membuktikan milikan atau kawalan ganja memandangkan orang lain mempunyai akses kepada bilik tertuduh (lihat ms 272F–I dan 273A–C); *Gooi Loo Seng v PP* [1993] 2 MLJ 137 diikut.

(5) Keterangan pegawai polis berhubung dengan rampasan jambak kunci daripada buku lima tertuduh tidak masuk akal dan tidak dapat dipercayai. Selanjutnya, keterangan ASP Imran memperolehi kunci-kunci daripada buku lima tertuduh tidak disokong oleh pegawai polis yang menggari tertuduh. Penilaian maksima keterangan pihak pendakwa mestilah dijalankan dan ia bermakna bahawa pihak pendakwa telah gagal membuktikan pertuduhan pengedaran melampaui keraguan munasabah (lihat ms 273G–I dan 274A–I).

(6) Tiada sebarang ketaksaan tentang takrifan Perintah (Pindaan Jadual Pertama) Dadah Berbahaya 1996. Kesan 'ganja (Hemp dari India) dan resin ganja (resin Hemp dari India)' sebagai dadah berbahaya telah dibatalkan oleh pindaaan itu. Oleh kerana ganja yang dikatakan diedar oleh tertuduh bukan ganja sahaja tetapi juga Hemp dari India, maka tertuduh tidak melakukan apa-apa kesalahan di sisi undang-undang (lihat ms 278E–F); *PP v Amir bin Mahmood & Ors* [1996] 5 MLJ 159 diikut dan *Mohd Yusof bin Said v PP* [1996] 1 MLJ 640 dibeza.]

[*Editorial Note*: The Public Prosecutor filed an appeal to the Court of Appeal on 6 August 1997.]

Notes

For cases on joinder of charge, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 819–860.

For a case on presumption in drug trafficking cases, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) para 1299.

For cases on close of prosecution's case, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2899–2915.

For cases on similar facts, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1442–1465.

Cases referred to

Abubakar bin Ismail v R [1954] MLJ 67 (folld)
Amrita Lal Hazra v Emperor 42 Cal 957 (refd)
Arulpragasan all Sandaraju v PP [1997] 1 MLJ 1 (refd)
Gooi Loo Seng v PP [1993] 2 MLJ 137 (folld)
Lee Chee Meng v PP [1992] 1 MLJ 323 (refd)
Mohd Yusof bin Said v PP [1996] 1 MLJ 640 (distd)
Ng Kook Kin v PP [1995] 2 MLJ 35 (folld)
PP v Amir bin Mahmood & Ors [1996] 5 MLJ 159 (folld)
PP v Roslim bin Harun [1993] 3 CLJ 1162 (refd)
PP v Sulaiman bin Mohamad Noor [1996] 1 MLJ 196 (refd)
R v Shahpurkar ILR 30 Bom 49 (refd)
Seaford Court Estates Ltd v Asher [1949] 2 All ER 155 (refd)
Shukri bin Mohamad v PP [1995] 3 MLJ 229 (refd)
Warburton v Loveland (1832) 2 Dow & Cl 480, 5 ER 499 (refd)
Wong Yew Ming v PP [1991] 1 MLJ 3 (refd)
X v PP [1951] MLJ 10 (folld)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 163, 165(i)
Dangerous Drugs Act 1952 ss 2, 6, 37(a), (b), (d), (da)(iv), (g), 39B(1)(a), (2), 45A(c), Pt III First Schedule
Dangerous Drugs (Amendment of First Schedule) Order 1996

Ishak bin Mohd Yusoff (Deputy Public Prosecutor, State Legal Adviser's Chambers, Johor Bahru) for the prosecution.
Hisham Teh Poh Teik (*Teh Poh Teik & Co*) for the accused.

Abdul Malik Ishak J: In this case, the accused was charged with two offences. Firstly, in Criminal Trial No 45–5–97, he was charged for traffficking in 480.9gm of cannabis alleged to have been committed on 12 June 1996 at about 10.40 am in the kitchen area of house No 15, Jalan Mawar 38, Taman Mawar, Pasir Gudang, in the district of Johor Bahru, in the state of Johor ('the said house'), an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') and punishable under s 39B(2) of the same Act. Secondly, in Criminal Trial No 45–6–97, he was charged for trafficking in 997.79gm of cannabis alleged to have been committed on 12 June 1996 at about 10.40am in the third room of the said house, an offence under s 39B(1)(a) of the Act and punishable under s 39B(2) of the same Act.

At the commencement of the trial, Mr Ishak bin Mohd Yusoff, the learned deputy public prosecutor ('the DPP'), rightly applied for these two offences to be tried together. It is instructive to mention that s 163 of the Criminal Procedure Code (FMS Cap 6) ('the CPC') provides, firstly, that every distinct offence must be set out in separate charges and secondly, every charge must be tried separately. Here, s 165(i) of the CPC fits squarely into the matter and applies for the benefit of the prosecution. As can be seen, there is one accused person, the offences are committed in a series of acts, the acts are so connected together as to form the same transaction and there are more than one offence. Section 165(i) of the CPC enacts as follows:

> If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

and the word 'transaction' appearing therein must necessarily mean 'carrying through' which suggests proximity of time as well as continuity of action and purpose (*R v Shahpurkar* ILR 30 Bom 49). It is also instructive to note that in order that a number of acts may be so connected together as to form part of the same transaction, the essential elements would be community of purpose or design and continuity of action. *Amrita Lal Hazra v Emperor* 42 Cal 957 is a classic example. There it was held that there was no definite formula which may be used as a guideline to determine whether two or more acts form the same transaction. Invariably, the courts must take into account the following matters — not in order of priority: proximity of time, unity or proximity of place, continuity of action and continuity of purpose or design. For these reasons, the two offences were tried together.

The evidence as unfolded revealed the following facts. On 12 June 1996 at about 10.30 am, ASP Imran bin Abdul Rahman ('ASP Imran') accompanied by Insp Jafri bin Muhamad ('Insp Jafri') and Det Sergeant Major Badron bin Ismail ('Det Badron') proceeded to the said house. The police party was in civilian clothes and as they approached the said house they saw a male Malay ('the accused') washing a car in front of the house. ASP Imran introduced his office and detained the accused. A bodily search was conducted on the accused by ASP Imran. A waist pouch (exh P44) tucked at the waist of the accused was seized and an examination of its contents revealed dried leaves suspected to be cannabis. As events

unfolded the government chemist analysed the dried leaves and confirmed it to weigh 2.79gm of the purported cannabis. The recovery of the purported cannabis in the waist pouch was a subject matter of the police report vide Pasir Gudang Report No 1579/96. It must be emphasized that the purported cannabis found in the waist pouch was not part and parcel of the charges levied against the accused in the present hearing. But the DPP brought in evidence by way of examination-in-chief that the accused was charged in the magistrate's court for possession of the purported cannabis in the waist pouch and the case was still pending. In fact, Chief Insp Ahmad Hairohman testified that the accused faced a charge under s 6 of the Act before the magistrate's court, Johor Bahru vide case No A83–1061–96 for possession of 2.79gm of the purported cannabis in the waist pouch. Be that as it may, ASP Imran then ordered Det Badron to handcuff both the hands of the accused to the front. This was done. ASP Imran held onto the waist pouch that contained the purported cannabis and then proceeded to examine the car which bore registration No JBS 2811 and nothing incriminating was found therein. From there, the police party escorted the accused and entered the said house. The front wooden door was behind a metal grilled door which was left ajar. The front wooden door was closed but not locked and as the police party entered the living room accompanied by the accused, they saw a male Malay known as Razali bin Rejab ('Razali') who was resting and placed him under arrest. Of course, before effecting the arrest, ASP Imran had identified his office to Razali.

ASP Imran then proceeded to examine the middle room ('the second room') and he found a male Malay known as Mohd Salehin bin Nasir ('Salehin') who was asleep in that room. ASP Imran woke Salehin, identified his office and placed Salehin under arrest. ASP Imran then proceeded to escort, with the aid of the other two police personnel, the accused, Razali and Salehin to the front room ('the first room'). There, a male Malay known as Shukri bin Jaffar ('Shukri') was seen sleeping and ASP Imran woke him up, introduced his office and placed Shukri under arrest. At this juncture, ASP Imran directed Insp Jafri to place and guard Razali, Salehin and Shukri in the first room. This was done. Then ASP Imran assisted by Det Badron escorted the accused to the rear portion of the said house. They heard someone taking a bath in the bathroom. ASP Imran knocked on the door of the bathroom and a male Malay known as Mohd Saini bin Majid ('Saini') came out. Without further ado, ASP Imran introduced his office and placed Saini under arrest. Saini was then escorted to the first room to be guarded by Insp Jafri.

Once again with the assistance of Det Badron, ASP Imran escorted the accused and proceeded to the back room ('the third room'). The door to the third room was closed but not locked. A key was attached to the key hole and ASP Imran tested the key and discovered that it fit the door of the third room. That key was able to lock and unlock the door to the third room. That key bore No 31 and ASP Imran seized the key and kept it in his pocket. In the course of the trial, evidence was led to show that this key No 31 was missing and therefore it was not marked as an exhibit. The investigating officer in the person of Chief Insp Ahmad Hairohman

explained that key No 31 which was held by him was somehow missing and this happened when his office moved from Jalan Mahmoodiah to the police contingent in Johor Bahru. Be that as it may, ASP Imran entered the third room accompanied by the accused and Det Badron. An examination of the third room was conducted by ASP Imran. In the drawer of the dressing table (photograph P11K), ASP Imran found a package wrapped in a Malay language newspaper dated 19 May 1996. Inside that newspaper package, two packets of dried leaves which the government chemist confirmed to be 10.7gm of the purported cannabis was found. In the green plastic cupboard (photograph P11L) of the third room, ASP Imran also recovered two plastic packets containing what the government chemist said to be 8.4gm of purported cannabis. At the bottom portion of that green plastic cupboard (photograph P11L), ASP Imran found a bundle of empty plastic wrappers measuring 3 in by 5 in (exh P36) and 5 in by 8 in (exh P37) respectively. Of interest would be the evidence of ASP Imran who testified that while in the third room, he saw the accused clench his right fist and he found a bunch of three keys (exh P39, P40 and P41) held by the accused therein. ASP Imran seized that bunch of three keys from the accused. This piece of evidence was not corroborated by Det Badron and this would be shown later. In the third room, ASP Imran saw the ceiling boards being removed as seen in photographs P11M and P11N and, using a stool as seen in photograph P11L, ASP Imran climbed and found a 'Sakuni laundry bag' ('exh P21') as seen in photograph P21A. On examination of exh P21, ASP Imran found compressed dried leaves wrapped in a transparent plastic containing what the government chemist said to be 978.6gm of purported cannabis. It was in evidence that exh P21 could not be seen from the third room unless the individual climbed and examined the ceiling. It must be emphasized that the examination of the third room was conducted in the presence of the accused and Det Badron. It is germane to mention that according to the government chemist, the total weight of the purported cannabis found in the third room was 997.7gm which perfectly tallied with the requisition and the consent from the DPP in exh P4 but the amended charge in exh P2 showed the weight to be 997.79gm. One wonders where did the DPP obtained the additional 0.09gm.

From there, ASP Imran proceeded to the kitchen portion of the said house, as reflected in photograph P11E. On the kitchen floor, ASP Imran seized a dark blue coloured bag with brand name 'RECCO' (photograph P12G and exh P15) and upon examining its contents, found a yellow coloured tool box (photograph P12H and exh P29) which was padlocked. The brand of the padlock was 'ROCK' brand (exh P38) and using one of the keys taken earlier from the clenched fist of the accused, to be precise the key was also of 'ROCK' brand (exh 39), ASP Imran managed to open the yellow coloured tool box. Inside it ASP Imran found 31 packets containing dried leaves and two plastic packets each containing compressed dried leaves which the government chemist said to be 480.9gm of purported cannabis which formed the basis of the charges in Criminal Trial No 45–5–97. It must be emphasized that ASP Imran demonstrated

in open court that the key with brand name 'ROCK' (exh P39) was able to open the padlock with the brand name 'ROCK' (exh P38). ASP Imran also demonstrated that the keys with brand names 'WD' (exh P40) and '3 circles' (exh 41) could not unlock the padlock with the brand name 'ROCK' (exh P38). A

Incidentally, there were remnants of the purported cannabis in the yellow coloured tool box weighing 0.38gm and somehow this was incorporated as part and parcel of the charges, in relation to the recovery of the purported cannabis in the kitchen area of the said house in the present trial. ASP Imran then put back the 33 packets and its contents into the yellow coloured tool box, padlocked it and then put them inside the dark blue coloured 'RECCO' bag and handed the same to Det Badron for supervision. ASP Imran continued to hold onto the key (exh P39). In the kitchen, ASP Imran also seized a red coloured weighing scale with the brand name 'ACCURA' as reflected in photograph P12I and exh P16. B C

Still inside the said house, ASP Imran proceeded to examine the second room in the presence of Razali. In the red plastic cupboard (photograph P11H), ASP Imran found 12 plastic packets containing dried leaves (photograph P12D) which the government chemist said to be 14.2gm of purported cannabis. Chief Insp Ahmad Hairohman testified that Razali was charged in the magistrate's court Johor Bahru vide case No B83–1060–96 under s 6 of the Act and he pleaded guilty thereto for possession of 14.2gm of purported cannabis and was sentenced to 12 months imprisonment wef 12 June 1996. Razali has since served his jail term and had been released on 12 February 1997. Attempts to trace Razali proved futile. D E

Now, the recovery and seizure of the purported cannabis inside the said house was made a subject matter of the police report vide Pasir Gudang Report No 1581/96. F

In the said house, ASP Imran thereafter proceeded to examine the first room and the living room area. No incriminating articles were found there. The accused and the rest of the suspects, namely Razali, Shukri, Salehin and Saini were then brought to the police station with the help of the other police personnel. All the exhibits that were seized were taken to the police station and subsequently handed to the investigating officer. Sufficient evidence was led to show that the movements of the exhibits were all accounted for until they were produced before this court. G

The said house was owned by Yahaya bin Mohd Latim ('Yahaya') and he gave evidence for the prosecution. Yahaya testified that he purchased the said house in January 1995 and when the said house was ready for occupation he rented it to 'Nan Dahari' for RM520 per month. Yahaya identified the said house as shown in photographs P11A, P11B, P11C and P11D. There was no tenancy agreement and the said house was rented out on 1 November 1995. Rental receipts were issued as reflected in exh P14. Yahaya gave a set of keys to Nan Dahari. During the subsistence of that tenancy, Yahaya testified that he did not enter the said house even when H I

A he collected the monthly rental. Yahaya was not able to say where Nan Dahari was now.

Shukri gave evidence for the prosecution. Shukri testified that he stayed in the said house for a period of three months before his arrest. Through Shukri, the prosecution established beyond reasonable doubt the B occupants of the said house. Certainly, it was a bachelor's pad. The first room was occupied by Shukri and Nan Dahari. The second room was occupied by the accused alone. The keys to the bedrooms were kept by the occupants individually. Thus, each occupant had one key to his own room. Shukri testified that on the day the police raided the said house, he was arrested. Also arrested and who were present at the said house were C Razali, Salehin and the accused. At the time the police party raided the said house, Nan Dahari was not in. It was Shukri's evidence that Saini was a house guest and he was there to take his bath. All of them knew Saini and the latter was regarded as their mutual friend. Shukri was quite blunt when he said he did not know the present whereabouts of Razali, Salehin, Saini D and Nan Dahari. No cooking was done in the kitchen as all the occupants purchased their meals from outside. Shukri was categorical that on 10 June 1996 and 11 June 1996 he did not enter the accused's room. Shukri knew that the police recovered drugs in the accused's room, particularly in the ceiling portion, and also in the kitchen area; elsewhere he did not know. Shukri testified that the police examined the first room in his presence and E nothing incriminating was found therein. Shukri rented the first room at RM110 per month and he paid the rental to Nan Dahari every month. When shown the dark blue coloured bag with the brand name 'RECCO' as per exh P15 and as seen in photograph P12G, Shukri said he never saw that bag on 10 June 1996. Shukri too denied that he ever saw the weighing F machine as reflected in photograph P12I and exh P16. Shukri said that if there was no one in the said house, the front wooden door would be locked and the grilled door would be unlocked. Of pertinence would be the damning evidence which Shukri testified and which received vehement objections by Mr Hisham Teh Poh Teik, the learned defence counsel for the accused. That evidence was this. Throughout Shukri's stay in the said G house, he had smoked 'ganja' and it was the accused that gave him the 'ganja' — the local jargon for cannabis. On the morning of 12 June 1996, the accused gave 'ganja' to Shukri in the said house. Prior to 12 June 1996, the accused had given 'ganja' on ten occasions to Shukri to smoke. This was used as a leverage by the learned DPP when he submitted that by the same token, 'ganja' was kept by the accused in the third room on ten H previous occasions. Shukri testified that he saw the accused take the 'ganja' from the third room — the room occupied by the accused. According to Shukri, the accused gave the 'ganja' to him free of charge and each time it was in a small fraction only. In regard to the 'ganja' that was found in the ceiling, Shukri said it did not belong to him. Shukri testified that Saini I visited the said house to take his bath and for that purpose he changed in the second room.

Under cross-examination, Shukri testified that he did not know where Nan Dahari and Razali were. He knew that Razali smoked 'ganja'

with him and he also knew that the police recovered 'ganja' from Razali's room. He admitted that on the morning of 12 June 1996, the police arrested — apart from himself — the accused, Razali, Saini and Salehin. He agreed that Saini, Salehin and himself were released after being detained for 14 days. He knew that Razali was not released after being arrested and that Razali was charged in the magistrate's court. However, he did not know that Razali had pleaded guilty before the magistrate and was convicted and sentenced to 12 months' imprisonment. Of crucial importance was the admission by Shukri that there were other friends that visited the said house to sleep, take a bath or chit-chat and these other friends were Ali, Zali and Man. Shukri too admitted that Hamidon, Hamid and Ayob also came to the said house to take a bath, to sleep and to talk. There were others that visited the said house but he could not recall their names. According to Shukri, these personalities that came to the said house were friends of the accused, Nan Dahari, Salehin, Zahari and himself. Shukri testified further that he worked at a furniture factory in the evenings between 5pm to 7am and, between those times, if Ali, Zali, Man, Hamidon, Hamid, Ayob, Hassan and other friends were to visit the said house, he did not know. Shukri agreed that these friends came to the said house to take a bath, to sleep and to talk and, in pursuance of these purposes, they had free access to the kitchen, the first room, the second room and the third room. Shukri testified that he gave a statement to the police where he admitted smoking 'ganja' but he was never charged for doing so. It was put to Shukri and he agreed that he was not charged in the magistrate's court for smoking 'gannja' because the police wanted to use him as a witness against the accused. But Shukri categorically stated that the police did not direct him to tell the court that the accused gave him 'ganja' to smoke. Shukri too agreed that Razali gave him 'ganja' to smoke. Shukri was adamant that the accused gave him 'ganja' to smoke and that whatever he said in court was not a lie. Shukri said too that he was not lying when he testified that the accused gave him 'ganja' to smoke.

Shukri's re-examination was short. This was what he said. That he did not know the addresses nor the identity card numbers of Ali, Zali, Man, Hamidon, Hamid, Ayob, Hassan and the rest of the friends. That he voluntarily gave a statement to the police. That he knew that Razali smoked 'ganja' but he did not know where Razali obtained his supply from.

The accessibility of all the rooms including the kitchen portion in the said house to those personalities have been emphasized repeatedly by Shukri. ASP Imran too was cross-examined at length on the same point. ASP Imran agreed that Razali, Shukri, Salehin and Saini could enter the accused's room in the said house. ASP Imran agreed that these four people could also climb up the ceiling in the accused's room and proceed to the dressing table in the accused's room where the drugs were recovered. These four people too had access, according to ASP Imran, to the kitchen and the second room of the said house.

Now, from the facts several observations must be made and highlighted.

Firstly, the recovery of the purported 2.79gm of cannabis from the waist pouch was a subject matter of a different police report from that of the two charges which the accused is facing. Consequently, they are not related to the two charges presently tried before this court. The charge against the accused for possession of that 2.79gm of the purported cannabis under s 6 of the Act is still pending before the Magistrate's Court, Johor Bahru. The admissibility of that recovery in the waist pouch is beyond dispute and this is supported by the decision of Foster-Sutton CJ in *X v PP* [1951] MLJ 10 where his Lordship in a short compelling judgment reviewed the facts and categorically laid down the law as follows (at p 10):

> Evidence was led by the prosecution to shew that the appellant consorted with bandits who visited the same estate on 27 October 1950, and that during their visit he aided and abetted them. This evidence was admitted after a submission by the deputy public prosecutor that it was admissible under s 11(b) of the Evidence Ordinance 1950, as going to shew that the money demanded was, in fact, intended for the use of the bandits.
>
> On hearing of this appeal Mr Nair, on behalf of the appellant, submitted that the evidence as to the latter incident was inadmissible as it tended to show that the accused had been guilty of a criminal act other than the one covered by the charge, that the two acts did not form part of the same transaction and that an interval of 14 days is too remote, alternatively, 'that if the evidence was admissible on any technical ground, it should not have been admitted because it was too prejudicial to the accused.
>
> While it is not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of a criminal act other than that covered by the charge, for the purpose of leading to the conclusion that he is a person likely from his criminal conduct to have committed the offence for which he is standing his trial, the mere fact that the evidence adduced tends to shew the commission of another offence does not render it inadmissible if it be relevant to an issue before the court, and it may be so relevant if it is indicative of a state of mind, such as intention.

The issue of similar fact evidence surfaced once again in the case of *Abubakar bin Ismail v R* [1954] MLJ 67 where Brown J said (at p 68):

> The third ground of appeal relates to what has been called the 'similar acts' evidence. The prosecution called evidence to prove that on eight occasions, between 29 September and 29 October 1952, the appellant had made similar endorsements to the effect that he had seen Federation driving licences in the case of eight applicants whose forms he had filed in, and that in none of the eight cases had the applicant produced a Federation driving licence for his inspection.
>
> 'The general rule of law applicable in such cases can be clearly stated. It is that, apart from express statutory enactments, evidence tending to show that the accused had been guilty of criminal acts other than those covered by the indictment cannot be given unless the acts sought to be proved are so connected with the offence charged as to form part of the evidence upon which it is proved: see *R v Rearden* 4 F & F 76; or are material to the question whether the acts alleged to constitute the crime were designed or accidental: see *R v Gray* 4 F & F 1102; or to rebut a defence which would otherwise be open to the accused: see *Makin v*

Attorney General for New South Wales [1894] AC 57. As is pointed out in the last mentioned case, the statement of these general principles is easy; in applying them it is often very difficult to draw the line and decide whether a particular piece of evidence is admissible or not.' A

This quotation is from *R v Bond* [1906] 2 KB 394. In the present case, it is said that the evidence to which objection is taken was admissible to rebut the defence that what purported to be Federation licences were in fact produced to the appellant but were forgeries. It is said that the issue in these charges was whether the endorsements which the appellant made on the two application forms which were the subject of the charges were false to his knowledge, and that the fact that he had, within a month shortly before the two occasions in respect of which he was charged, made similar endorsements in eight cases without having the Federation licences produced to him was material to that issue. B C

But the sting of the recovery of the drugs in the waist pouch are greatly circumscribed by the fact that other personalities had access to the said house.

Secondly, notwithstanding that Razali and Salehin shared the same room, the prosecution, in its wisdom, decided to charge Razali alone for the recovery of the purported 14.2gm of cannabis in that room (the second room) in the magistrate's court and Razali had pleaded guilty thereto and had served his sentence of 12 months' imprisonment and had since been released and now untraceable. There was no evidence that Razali obtained the drugs, for which he pleaded guilty to, from the accused. Shukri testified that he knew that Razali smoked 'ganja' but he did not know where Razali obtained his stock from. Thus, the drugs found in the room occupied by Razali and Salehin cannot be connected to the accused. D E

Thirdly, the prosecution sought to connect the drugs found in the waist pouch to the drugs found in the accused's room to show that the accused had knowledge of the drugs inside the accused's room. In the same vein, the prosecution sought to co-relate the admission of Shukri that the accused gave him, on ten occasions, small fractions of 'ganja' to smoke to show knowledge and that the possession of the drugs by the accused was not accidental, on the authority of *Wong Yew Ming v PP* [1991] 1 MLJ 31 which was applied vigorously in *PP v Roslim bin Harun* [1993] 3 CLJ 1162. The prosecution relied on the statutory presumptions as found in ss 37(a), (b), (d), (da)(vi) and (g) of the Act. These statutory presumptions are rebuttable on the balance of probabilities and, in my judgment, they have been rebutted by the evidence of the prosecution. It must be emphasized that these statutory presumptions must be read with the factual matrix of the present case especially that part which showed that the said house was easily accessible to others, particularly the third room and the kitchen portion. In the context of the statutory presumption under s 37(da)(vi) of the Act, the evidence of the government chemist made inroads into and created serious doubts on the balance of probabilities as to the subject matter of the charges of which I have more to say in the later part of this judgment. It must not be forgotten that there was ample evidence to show that all the rooms and the kitchen in the said house were accessible to Ali, Zali, Man, Hamidon, Hamid, Ayob, Hassan and a host of other unnamed F G H I

personalities that used to frequent the said house. ASP Imran agreed that co-tenants like Razali, Shukri and Salehin, together with the unfortunate visitor in the person of Saini who was arrested while having his bath in the said house, had access to the accused's room as well as the kitchen in the said house. Razali, Shukri, Salehin and Saini were said to be capable of climbing the ceiling in the accused's room and they too could proceed to the dressing table in the accused's room where the drugs were recovered. This was clearly the case where others had access to the accused's room. Even if the accused had knowledge of the presence of the purported cannabis in his room, at the places mentioned in the early part of this judgment, that by itself would be insufficient to establish possession or control of the purported cannabis given the scenario that others too had access to the accused's room and could have concealed the purported cannabis there. This was the very reasoning adopted by Edgar Joseph Jr SCJ (now FCJ) in *Gooi Loo Seng v PP* [1993] 2 MLJ 137. His Lordship succinctly said (at p 142):

> We need hardly add, that even if the appellant had known of the presence of the heroin in his bedroom, that by itself would not have been sufficient to establish that he was in possession or in control of it given the fact that others too, and certainly his girlfriend Tan Ah Kwai, had access to the bedroom and could have concealed the heroin there. At the end of the day, this was a case of the proverbial cap which might have fitted not just the head of the appellant but that of others as well.

In my judgment, on the facts of the present case, the proverbial cap might have fitted not just the head of the accused but that of Razali, Shukri, Salehin, Saini, Ali, Zali, Man, Hamidon, Ayob, Hassan and a host of other unnamed personalities that frequented the said house.

Fourthly, the doubt as to the exclusive use of the third room (as per the charge) by the accused, by itself, would be a sufficient ground to discharge and acquit the accused of the charge pertaining to the recovery of the purported cannabis in the third room on the authority of *Lee Chee Meng v PP* [1992] 1 MLJ 323 without having to call for his defence. This was my judgment and I so hold accordingly.

Fifthly, to connect the accused with the purported cannabis found in the yellow-coloured tool box (exh P29 and photograph P12H), the prosecution through ASP Imran stated that a bunch of three keys (exh P39, P40 and P41) seized from the clenched right fist of the accused in the third room, particularly the key bearing the 'ROCK' brand (exh P39) was able to open the padlock which bore the brand name 'ROCK' that was used to lock the yellow-coloured tool box. In my judgment, the evidence of ASP Imran in regard to the seizure of this bunch of keys from the clenched right fist of the accused in the third room was far-fetched and could not be believed for the following reasons:

(a) When the accused was first arrested outside the said house, ASP Imran made a bodily search on the accused and nothing incriminating was found on him except the waist pouch that was worn by the accused. Det Badron testified under examination-in-chief that at that juncture, he did not notice that anything was held by the accused. It must be

recalled that it was Det Badron that handcuffed both hands of the accused to the front after discovery of the purported cannabis in the waist pouch. Indeed, if the accused held in his clenched right fist the bunch of three keys as alleged by ASP Imran, then surely Det Badron would have noticed it and he himself would seize it. This was not the case here. ASP Imran under cross-examination admitted that when the accused was arrested, he did not see the accused hold onto a bunch of three keys in the clenched right fist of the accused. ASP Imran further agreed under cross-examination that if the accused held a bunch of three keys in his clenched right fist at the time of the arrest, ASP Imran would have significantly noticed it. The crucial question to pose would be this: Was the accused given the opportunity, after his arrest and after both his hands had been handcuffed to the front by Det Badron, to hold onto the bunch of three keys in his clenched right fist? No opportunity was accorded or was opened to the accused to do this for the simple reason that he was being guarded attentively by Det Badron and the movements of the accused were significantly monitored. ASP Imran did not testify under oath that he saw the accused take a bunch of three keys from someone or from some part of the said house. Incidentally, Det Badron testified under examination-in-chief that when he escorted the accused to the kitchen accompanied by ASP Imran, he saw ASP Imran open the yellow-coloured tool box (exh P29) with a key as that tool box was padlocked at the material time. But, and this is the material evidence, Det Badron could not remember where ASP Imran took that key from. There was thus no corroboration by Det Badron of the evidence of ASP Imran in regard to this aspect of the case. At the close of the case for the prosecution, there were two conflicting versions in regard to this aspect of the case. In such a situation, the prosecution could not be said to have proved its case beyond reasonable doubt. The law on the standard of proof required of the prosecution at the close of its case is finally settled and that is beyond a reasonable doubt. This is amplified in the case of *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 where Eusoff Chin Chief Justice of the Federal Court succinctly said (at p 12):

> It is trite law that the onus is on the prosecution throughout the case in any criminal trial to prove the charge against the accused beyond reasonable doubt. In my view, the same standard of proof applies at the intermediate state of the trial, ie at the close of the prosecution.

(b) Since the standard of proof required from the prosecution at the close of its case is the beyond all reasonable doubt standard of proof, then a maximum evaluation of the evidence rendered by the prosecution must be undertaken. It follows that 'a more credible test of credibility' must be applied to the prosecution's evidence as envisaged in *Arulpragasan*. Viewing the evidence from all angles, it can be argued that the bunch of three keys recovered from the clenched fist of the right hand of the accused, if believed as being the truth (though the evidence of Det Badron went the other way), that

did not mean that there was no duplicate to those keys at the material time. ASP Imran was cross-examined, particularly in regard to the key as per exh P39 that was able to open the padlock to the yellow coloured tool box, and it was stressed to him that there was a duplicate to exh P39. In reply, ASP Imran said that he could not be certain that there was a duplicate to exh P39. Then again, ASP Imran testified that he made a search of the first room and nothing incriminating was found. But that search was focused centrally on the recovery of drugs and not for the duplicates of the bunch of three keys, in particular the duplicate to exh P39.

Another angle would be this. With respect, ASP Imran was telling a lie in regard to the recovery of the bunch of three keys in the clenched right fist of the accused because why should the accused after being arrested hold those keys in his clenched right fist which would certainly connect him to the incriminating contents of the yellow coloured tool box. This brings to the forefront the relevant passages in the judgment of Edgar Joseph Jr FCJ in *Arulpragasan*. His Lordship lucidly pointed out (at pp 63I and 64 A–C) that:

> In evaluating the testimony of the security guard, Ravi Shankar, the judge rightly regarded as material the fact that this witness and the appellant were strangers. His Lordship then went on to conclude that such being the case, he could think of no reason why this witness should do such a vicious thing as to invent a story implicating the appellant in a capital offence. True it is that there was no animosity between the appellant and this witness, but if there was no reason on the one hand for a false accusation, there was equally no reason, on the other, for the appellant, to run the unnecessary risk of making the highly incriminating disclosure alleged to a total stranger, who he knew was a security guard, then to leave the brown bag with the cannabis in it virtually in the latter's charge, while he went for a leisurely breakfast, well knowing that it would be the security guard's duty to report the matter to authorities. The audacity of the alleged disclosure is lacking alike in cunning and contrivance. It is difficult indeed to associate simplicity so absolute with a course so perilous: the risks of detection were very great and the consequences of detection calamitous. Yet, nowhere in his judgment did the judge even mention these formidable factors which told in favour of the appellant. The judge had thus failed to view the relevant facts from all angles and the appellant was undoubtedly prejudiced thereby.

Indeed, it was mind boggling to even consider the perilous course undertaken by the accused in holding onto the bunch of three keys in his clenched right fist after the accused was arrested and had both his hands handcuffed to the front. Det Badron was not able to corroborate ASP Imran on this crucial aspect of the case. For these reasons, the charge of trafficking in the purported cannabis in the kitchen area of the said house was not proved beyond reasonable doubt. The accused was entitled in law to be acquitted and discharged without his defence being called.

The subject matter of the two charges

There was a doubt as to whether the subject matter was indeed cannabis within the meaning of s 2 of the Act. True it is that the government chemist testified that the dangerous drugs were cannabis as defined under

s 2 of the Act but that evidence was peppered with doubts so crucial that it went to the substratum of the whole case. Under cross-examination, the government chemist agreed that Indian hemp is synonymous with cannabis. The government chemist too agreed that Indian hemp is the same as cannabis. Of crucial importance were the assertions by the government chemist that he could not deny that the exhibits in P20 (the drugs found in the yellow coloured tool box), P23 (the drugs found in the ceiling of the accused's room), P24 (the drugs found in the green plastic cupboard located in the accused's room), P26 (the drugs found in the dressing table located in the accused's room), P29A (the remnants of the drugs in the yellow coloured tool box) and P31 (the drugs found in the waist pouch) were Indian hemp. It is germane to point out that the words 'cannabis (Indian hemp) and cannabis resin (resin of Indian hemp)' that appeared in Pt III of the First Schedule to the Act have been deleted by PUA 170/1996 via the Dangerous Drugs (Amendment of First Schedule) Order 1996 that came into effect on 12 April 1996. A dangerous drug is defined in s 2 of the Act to mean 'any drug or substance which is for the time being comprised in the First Schedule'. Since the government chemist agreed that exhibits P20, P23, P24, P26, P29A and even P31 were 'Indian hemp', it follows that with the amendment as illustrated above the drugs were no longer dangerous and in fact were harmless and in the eyes of the law, lawful. The concessions by the government chemist that the offending exhibits as alleged could also be Indian hemp nullified the subject matter of both charges. The Minister under s 45A(c) of the Act considered it expedient that the words 'cannabis (Indian Hemp) and cannabis resin (resin of Indian hemp)' be deleted from the statute book. That there was this deletion is clear and explicit and this court must give effect to it. Of course, the draftsmen played a major role in drafting that amendment. But in so doing, the draftsmen in an attempt to avoid the pitfalls of *PP v Sulaiman bin Mohamad Noor* [1996] 1 MLJ 196 and *PP v Amir bin Mahmood & Ors* [1996] 5 MLJ 159 deleted entirely the words 'cannabis (Indian hemp) and cannabis resin (resin of Indian hemp)' and inserted after the item 'etoxeridine' in Pt III of the First Schedule to the Act, the following items:

> Extract or tincture of cannabis.
> Extract or tincture of coca leaves.
> Extract or tincture of opium.

In *PP v Sulaiman bin Mohamad Noor*, the court there held (at p 201E) that:

> An expert, like the government chemist, must be very selective in the use of words when testifying in court. A wrong choice of words would be fatal especially when it involves a penal statute that carries with it the mandatory death penalty.

In *PP v Amir bin Mahmood & Ors*, the court there succinctly said (at p 173A):

> But alas, under cross-examination the government chemist emphatically stated that: ' ... Indian hemp adalah synonym kepada cannabis' and he agreed that: ' ... Indian hemp serupa dengan cannabis'.

A And further down the judgment in the same case, the court remarked (at p 173D):

> It is my judgment that the subject matter of the offence can also be regarded as cannabis (Indian hemp). Since there is this nagging doubt, the benefit of it should be given to the three accused persons.

B Factually, the Federal Court's decision in *Mohd Yusof bin Said v PP* [1996] 1 MLJ 640 are poles apart from the present case. There, the government chemist did not allude to the fact that Indian hemp is synonymous with cannabis nor did the government chemist say that Indian hemp is the same as cannabis. Neither did the government chemist categorically say in that C case that the drugs in question were Indian hemp. Mohamed Dzaiddin FCJ, who wrote the decision for the Federal Court in *Mohd Yusof bin Said*, took pains in differentiating *Shukri bin Mohamad v PP* [1995] 3 MLJ 229 in the following terms (at p 646H):

> ... First, on this particular aspect of PW1's evidence, it is quite clear to us D that his evidence did not stop at: 'I mean cannabis as defined under DDA 1952' as in *Shukri* and *Saime bib Jaafar v Pendakwa Raya* (Federal Court Criminal Appeal No 05–99–93) (unreported)). He went a step further by qualifying that 'resin had not been extracted', which no doubt is one of the ingredients of the definition of 'cannabis' in s 2, ie 'any part of the plant of the genus cannabis from which *the resin has not been extracted*'. In *Shukri*, the E chemist said nothing about the resin. Thus, in substance, PW1 had the s 2 definition in mind. (Emphasis added.)

In another part of the judgment in the same case, his Lordship Mohamed Dzaiddin FCJ continued (at p 647E):

> Thirdly, unlike *Shukri*, the learned judge at least adverted to the chemist's F evidence that the plant material was cannabis as defined under the DDA 1952 in his grounds of judgment, although falling into error by not stating the words 'section 2'.
>
> Therefore, from the combined effect of the evidence of the chemist, PW1, which are clearly distinguishable from Shukri, we have no hesitation in coming to the conclusion that his omission to state that by 'cannabis' he G meant cannabis as defined under s 2 of the DDA 1952, has not given rise to the inference that he did not have in mind the ingredients of 'cannabis' in the said section.

Why did the government chemist in the present case testify that the subject matter was Indian hemp? Why didn't the government chemist deny that H the subject matter was not Indian hemp so as to establish beyond all reasonable doubt as to the identity of the subject matter? The answers are simple. The subject matter in question is also Indian hemp and not purely cannabis as defined in s 2 of the Act.

Judges are fettered by the supposed rule that they must look to the I language employed and nothing else, and when faced by poor drafting judges can do nothing but to lament that the draftsmen have not provided for certain things or that they have deleted certain words, like the present case, or that the draftsmen have been guilty of some ambiguity. Lord Denning LJ in *Seaford Court Estates Ltd v Asher* [1949] 2 All ER 155 at p 164 aptly said:

> It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity.

It has been said time and again that 'the words of the statute speak the intention of the legislature' (per Tindal CJ in *Warburton v Loveland* (1832) 2 Dow & Cl 480 at p 489, 5 ER 499). The Dangerous Drugs (Amendment of First Schedule) Order 1996 in clear unambiguous words deleted the crucial words 'cannabis (Indian Hemp) and cannabis resin (resin of Indian hemp)' and I have no choice but to interpret it as such. On statutory interpretation, I did say in *Ng Kook Kin v PP* [1995] 2 MLJ 35 (at p 141B) the following words, which must surely apply to the present case:

> As Lord Diplock said: 'Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities ... ' (*Duport Steels v Sirs* [1980] 1 All ER 529 at p 541; [1980] 1 WLR 142 at p 157). Even if there is any ambiguity, which is not detectable here, the construction which is in favour of the freedom of the individual should be adopted (*David v De Silva* [1934] AC 106 and *O'Connor v Issacs* [1956] 2 QB 288; [1956] 2 All ER 417; [1956] 3 WLR 172). In my judgment, since the words in s 20 of the Act are themselves precise and unambiguous, then one need not go any further than to expound those words in their ordinary and natural sense. Put in another way, the words themselves alone best declare the intention of the lawgiver: see *Sussex (Peerage) Case* (1844) 11 Cl & Fin 85 at p 143 and *Cargo ex Argos, Gaudet v Brown* (1873) LR 5 PC 134 at p 153.

There is no ambiguity at all to the Dangerous Drugs (Amendment of First Schedule) Order 1996 and there is only one construction to it and that construction favours the liberty of the accused. The sting of 'cannabis (Indian Hemp) and cannabis resin (resin of Indian Hemp)' as a dangerous drug has been taken away by that amendment and since the purported cannabis which the accused was said to traffick was indeed Indian Hemp, then the accused had not committed any offence known to law and in law. This was my judgment and I so hold accordingly. The accused was, in law, entitled to be acquitted and discharged on the balance of probabilities of both charges without his defence being called.

Accused acquitted and discharged without defence being called.

Reported by David Lai